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5 *Attorneys for Plaintiff*

6  
7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9 \* \* \* \*

10 DESERT VALLEY PAINTING & DRYWALL,  
11 INC., a Nevada corporation,

12 Plaintiff,

13 v.

14 UNITED STATES OF AMERICA,

15 Defendant.

Case No.

**COMPLAINT FOR REFUND OF  
INTERNAL REVENUE TAXES;**

**DEMAND FOR JURY TRIAL**

16 COMES NOW, DESERT VALLEY PAINTING & DRYWALL, INC. ("Plaintiff"), by  
17 and through its attorneys, BAILUS COOK & KELESIS, LTD., and hereby alleges as follows:

18 1. This is an action for the recovery of federal payroll tax and interest erroneously,  
19 illegally, or improperly assessed and collected from the Plaintiff. Subject matter jurisdiction is  
20 proper pursuant to the provisions of Title 28, United States Code §1346(a)(1) and Title 26,  
21 United States Code §7422.

22 2. Plaintiff is a corporate entity, organized in the United States, under the laws of the  
23 State of Nevada and doing business in Clark County, Nevada.

24 3. The defendant is THE UNITED STATES OF AMERICA ("Defendant").

25 4. Recovery is sought of federal payroll tax for the tax quarters beginning January 1,  
26 2004 through December 31, 2006. Plaintiff filed a Employer's Quarterly Federal Tax Return  
27 (Form 941) for each quarter at issue with the Internal Revenue Service.  
28

**FACTS COMMON TO ALL CLAIMS**

5. Plaintiff, a Nevada Licensed contractor of drywall services, entered into a contractual agreement with Centennial Drywall Systems, Inc. ("CDSI"), also a Nevada licensed contractor, for worker services to be provided by CDSI (the "Centennial/CDSI Contract").

6. The workers provided to Plaintiff under the Centennial/CDSI Contract were bound to CDSI pursuant to separate written agreement.

7. Plaintiff paid all funds due under the Centennial/CDSI Contract directly to and only to CDSI. Plaintiff made no payment to any individual engaged by CDSI.

8. CDSI treated its workers as independent contractors pursuant to a worker classification letter from the Internal Revenue Service (the "Worker Classification Letter") that had been issued over a decade ago and served as the industry-wide standard for drywall contractors.

9. From January 2004 through December 2006 Plaintiff made timely payroll tax deposits for its employees, and filed the required quarterly Form 941 with the Internal Revenue Service Center in Ogden, Utah. The tax deposits made and the payroll amounts reflected on the Forms 941 did not include amounts paid under the Centennial/CDSI Contract, as the workers provided pursuant to that contract were under separate agreement with CDSI and, pursuant to the Worker Classification Letter, were treated by CDSI as independent contractors.

10. In or about July, 2007 the Internal Revenue Service sent Plaintiff correspondence advising of a proposed changes to the company's employment tax based on a proposed worker classification determination for tax quarters beginning January 1, 2004 through December 31, 2006.

11. Plaintiff is informed and believes that the Internal Revenue Service attempted to collect payroll taxes from CDSI but was unsuccessful. As a result, the Internal Revenue Service ignored its prior determination and pursued the taxes from Plaintiff and numerous other drywall contractors.

12. Plaintiff disputed any reclassification of the CDSI workers.

13. On or about December 18, 2008, the Internal Revenue Service sent a Notice of Determination of Worker Classification (the “Notice of Determination”), erroneously finding that the CDSI drywall installers are “individually unidentifiable” and that Plaintiff was their employer, despite the fact that the workers were under separate agreement with CDSI, and in contravention to the Worker Classification Letter previously issued to CDSI.

14. The Internal Revenue Service further refused to recognize or grant relief under Section 530(a) to Plaintiff pursuant to its own prior determination for CDSI.

15. On or about June 8, 2009, the Internal Revenue Service sent Plaintiff Statements of Adjustment to Account for tax quarters beginning January 1, 2004 through December 31, 2006, claiming additional taxes and interest were owed for each tax quarter, based on its erroneous determinations of the CDSI workers' status.

16. On or about June 25, 2009, Plaintiff sent payment of taxes that had been assessed for each tax quarters at issue.

17. On or about July 14, 2009 Plaintiff filed with the Internal Revenue Service at Ogden, Utah, Forms 941X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund* for each tax quarter beginning January 1, 2004 through December 31, 2006, requesting abatement of the employment taxes assessed ("Forms 941X"), and refund of the partial payment made. The legal and factual statements in those Forms 941X, copies of which are attached hereto as Exhibit A, are incorporated herein.

18. Plaintiff is informed and believes that a period of six (6) months has expired since the filing of the Forms 941X, and the IRS has not rejected, accepted, or responded to the Forms 941X.

### FIRST CLAIM FOR RELIEF

19. Plaintiff restates and realleges paragraphs 1 through 18 of this Complaint as though fully set forth herein.

20. On or about June 8, 2009 the Internal Revenue Service assessed against Plaintiff additional employment taxes in the amount of \$28,842.00 and interest in the amount of \$11,111.56 for the tax period ending March 31, 2004.

1           21.     The taxes and interest were assessed based on the Internal Revenue Service's  
2 erroneous determinations of the CDSI workers' status.

3           22.     The action of the Defendant, through its agents, in assessing and collecting the  
4 taxes referred above, was improper, illegal and erroneous; the employment taxes and related  
5 penalties and interest should be abated.

6           23.     Plaintiff has overpaid employment taxes for the tax period ending March 31, 2004  
7 in the amount of \$250.00, and is entitled to a refund of that amount.

8                                   **SECOND CLAIM FOR RELIEF**

9           24.     Plaintiff restates and realleges paragraphs 1 through 23 of this Complaint as  
10 though fully set forth herein.

11           25.     On or about June 8, 2009 the Internal Revenue Service assessed against Plaintiff  
12 additional employment taxes in the amount of \$38,797.00 and interest in the amount of  
13 \$14,320.58 for the tax period ending June 30, 2004.

14           26.     The taxes and interest were assessed based on the Internal Revenue Service's  
15 erroneous determinations of the CDSI workers' status.

16           27.     The action of the Defendant, through its agents, in assessing and collecting the  
17 taxes referred above, was improper, illegal and erroneous; the employment taxes and related  
18 penalties and interest should be abated.

19           28.     Plaintiff has overpaid employment taxes for the tax period ending June 30, 2004  
20 in the amount of \$250.00, and is entitled to a refund of that amount.

21                                   **THIRD CLAIM FOR RELIEF**

22           29. Plaintiff restates and realleges paragraphs 1 through 16 of this Complaint as  
23 though fully set forth herein.

24           30.     On or about June 8, 2009 the Internal Revenue Service assessed against Plaintiff  
25 additional employment taxes in the amount of \$55,618.00 and interest in the amount of  
26 \$19,703.89 for the tax period ending September 30, 2004.

27           31.     The taxes and interest were assessed based on the Internal Revenue Service's  
28 erroneous determinations of the CDSI workers' status.

1           32.     The action of the Defendant, through its agents, in assessing and collecting the  
2 taxes referred above, was improper, illegal and erroneous; the employment taxes and related  
3 penalties and interest should be abated.

4           33.     Plaintiff has overpaid employment taxes for the tax period ending September 30,  
5 2004 in the amount of \$250.00, and is entitled to a refund of that amount.

6                               **FOURTH CLAIM FOR RELIEF**

7           34. Plaintiff restates and realleges paragraphs 1 through 33 of this Complaint as  
8 though fully set forth herein.

9           35.     On or about June 1, 2009 the Internal Revenue Service assessed against Plaintiff  
10 additional employment taxes in the amount of \$42,515.00 and interest in the amount of  
11 \$14,336.31 for the tax period ending December 31, 2004.

12           36.     The taxes and interest were assessed based on the Internal Revenue Service's  
13 erroneous determinations of the CDSI workers' status.

14           37.     The action of the Defendant, through its agents, in assessing and collecting the  
15 taxes referred above, was improper, illegal and erroneous; the employment taxes and related  
16 penalties and interest should be abated.

17           38.     Plaintiff has overpaid employment taxes for the tax period ending December 31,  
18 2004 in the amount of \$250.00, and is entitled to a refund of that amount.

19                               **FIFTH CLAIM FOR RELIEF**

20           39. Plaintiff restates and realleges paragraphs 1 through 38 of this Complaint as  
21 though fully set forth herein.

22           40.     On or about June 1, 2009 the Internal Revenue Service assessed against Plaintiff  
23 additional employment taxes in the amount of \$158,827.70 and interest in the amount of  
24 \$50,672.57 for the tax period ending March 31, 2005.

25           41.     The taxes and interest were assessed based on the Internal Revenue Service's  
26 erroneous determinations of the CDSI workers' status.

1           42.     The action of the Defendant, through its agents, in assessing and collecting the  
2 taxes referred above, was improper, illegal and erroneous; the employment taxes and related  
3 penalties and interest should be abated.

4           43.     Plaintiff has overpaid employment taxes for the tax period ending March 31, 2005  
5 in the amount of \$250.00, and is entitled to a refund of that amount.

6                           **SIXTH CLAIM FOR RELIEF**

7           44. Plaintiff restates and realleges paragraphs 1 through 43 of this Complaint as  
8 though fully set forth herein.

9           45.     On or about June 1, 2009 the Internal Revenue Service assessed against Plaintiff  
10 additional employment taxes in the amount of \$196,538.55 and interest in the amount of  
11 \$58,813.12 for the tax period ending June 30, 2005.

12           46.     The taxes and interest were assessed based on the Internal Revenue Service's  
13 erroneous determinations of the CDSI workers' status.

14           47.     The action of the Defendant, through its agents, in assessing and collecting the  
15 taxes referred above, was improper, illegal and erroneous; the employment taxes and related  
16 penalties and interest should be abated.

17           48.     Plaintiff has overpaid employment taxes for the tax period ending June 30, 2005  
18 in the amount of \$250.00, and is entitled to a refund of that amount.

19                           **SEVENTH CLAIM FOR RELIEF**

20           49. Plaintiff restates and realleges paragraphs 1 through 48 of this Complaint as  
21 though fully set forth herein.

22           50.     On or about June 1, 2009 the Internal Revenue Service assessed against Plaintiff  
23 additional employment taxes in the amount of \$213,405.60 and interest in the amount of  
24 \$59,467.40 for the tax period ending September 30, 2005.

25           51.     The taxes and interest were assessed based on the Internal Revenue Service's  
26 erroneous determinations of the CDSI workers' status.



1           52.     The action of the Defendant, through its agents, in assessing and collecting the  
2 taxes referred above, was improper, illegal and erroneous; the employment taxes and related  
3 penalties and interest should be abated.

4           53.     Plaintiff has overpaid employment taxes for the tax period ending September 30,  
5 2005 in the amount of \$250.00, and is entitled to a refund of that amount.

6                                   **EIGHTH CLAIM FOR RELIEF**

7           54. Plaintiff restates and realleges paragraphs 1 through 53 of this Complaint as  
8 though fully set forth herein.

9           55.     On or about June 1, 2009 the Internal Revenue Service assessed against Plaintiff  
10 additional employment taxes in the amount of \$232,818.02 and interest in the amount of  
11 \$59,670.92 for the tax period ending December 31, 2005.

12           56.     The taxes and interest were assessed based on the Internal Revenue Service's  
13 erroneous determinations of the CDSI workers' status.

14           57.     The action of the Defendant, through its agents, in assessing and collecting the  
15 taxes referred above, was improper, illegal and erroneous; the employment taxes and related  
16 penalties and interest should be abated.

17           58.     Plaintiff has overpaid employment taxes for the tax period ending December 31,  
18 2005 in the amount of \$250.00, and is entitled to a refund of that amount.

19                                   **NINTH CLAIM FOR RELIEF**

20           59. Plaintiff restates and realleges paragraphs 1 through 58 of this Complaint as  
21 though fully set forth herein.

22           60.     On or about June 1, 2009 the Internal Revenue Service assessed against Plaintiff  
23 additional employment taxes in the amount of \$286,317.56 and interest in the amount of  
24 \$67,291.75 for the tax period ending March 31, 2006.

25           61.     The taxes and interest were assessed based on the Internal Revenue Service's  
26 erroneous determinations of the CDSI workers' status.

1           62.     The action of the Defendant, through its agents, in assessing and collecting the  
2 taxes referred above, was improper, illegal and erroneous; the employment taxes and related  
3 penalties and interest should be abated.

4           63.     Plaintiff has overpaid employment taxes for the tax period ending March 31, 2006  
5 in the amount of \$250.00, and is entitled to a refund of that amount.

6                                   **TENTH CLAIM FOR RELIEF**

7           64. Plaintiff restates and realleges paragraphs 1 through 63 of this Complaint as  
8 though fully set forth herein.

9           65.     On or about June 1, 2009 the Internal Revenue Service assessed against Plaintiff  
10 additional employment taxes in the amount of \$261,683.47 and interest in the amount of  
11 \$55,584.64 for the tax period ending June 30, 2006.

12           66.     The taxes and interest were assessed based on the Internal Revenue Service's  
13 erroneous determinations of the CDSI workers' status.

14           67.     The action of the Defendant, through its agents, in assessing and collecting the  
15 taxes referred above, was improper, illegal and erroneous; the employment taxes and related  
16 penalties and interest should be abated.

17           68.     Plaintiff has overpaid employment taxes for the tax period ending June 30, 2006  
18 in the amount of \$250.00, and is entitled to a refund of that amount.

19                                   **ELEVENTH CLAIM FOR RELIEF**

20           69. Plaintiff restates and realleges paragraphs 1 through 68 of this Complaint as  
21 though fully set forth herein.

22           70.     On or about June 1, 2009 the Internal Revenue Service assessed against Plaintiff  
23 additional employment taxes in the amount of \$236,937.70 and interest in the amount of  
24 \$44,592.22 for the tax period ending September 30, 2006.

25           71.     The taxes and interest were assessed based on the Internal Revenue Service's  
26 erroneous determinations of the CDSI workers' status.



1           72.     The action of the Defendant, through its agents, in assessing and collecting the  
2 taxes referred above, was improper, illegal and erroneous; the employment taxes and related  
3 penalties and interest should be abated.

4           73.     Plaintiff has overpaid employment taxes for the tax period ending September 30,  
5 2006 in the amount of \$250.00, and is entitled to a refund of that amount.

6                           **TWELFTH CLAIM FOR RELIEF**

7           74. Plaintiff restates and realleges paragraphs 1 through 73 of this Complaint as  
8 though fully set forth herein.

9           75.     On or about June 1, 2009 the Internal Revenue Service assessed against Plaintiff  
10 additional employment taxes in the amount of \$128,346.32 and interest in the amount of  
11 \$20,739.20 for the tax period ending December 31, 2006.

12           76.     The taxes and interest were assessed based on the Internal Revenue Service's  
13 erroneous determinations of the CDSI workers' status.

14           77.     The action of the Defendant, through its agents, in assessing and collecting the  
15 taxes referred above, was improper, illegal and erroneous; the employment taxes and related  
16 penalties and interest should be abated.

17           78.     Plaintiff has overpaid employment taxes for the tax period ending December 31,  
18 2006 in the amount of \$250.00, and is entitled to a refund of that amount.

19           WHEREFORE, Plaintiff prays that judgment be entered in its favor as follows:

- 20           1.     For abatement of the employment taxes, penalties, and interest assessed for tax  
21                 quarters beginning January 1, 2004 through December 31, 2006;
- 22           2.     For a refund in the amount of \$3,000.00 for tax quarters beginning January 1,  
23                 2004 through December 31, 2006, together with interest as provided by law;
- 24           3.     For reasonable attorneys' fees;
- 25           4.     For costs of suit herein.
- 26           5.     For such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby requests a trial by jury of all claims in this matter.

DATED this 8th day of ~~March~~ <sup>April</sup>, 2010.

BAILUS COOK & KELESIS, LTD.

By: \_\_\_\_\_

GEORGE P. KELESIS, ESQ.

Nevada Bar No. 000069

400 South Fourth Street, Suite 300

Las Vegas, Nevada 89101

*Attorneys for Plaintiff*

# EXHIBIT A

Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**  
 (Rev. June 2009) Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN)  
 Employer identification number 88-0244843

Name (not your trade name) DESERT VALLEY PAINTING & DRYWALL INC.

Trade name (if any) \_\_\_\_\_

Address 3445 W LAKE MEAD BLVD. - SUITE 100  
Number Street Suite or room number

NORTH LAS VEGAS NV 89032-5221  
City State ZIP code

Use this form to correct errors you made on Form 941 or 941-SS for one quarter only. Type or print within the boxes. You MUST complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

**Part 1: Select ONLY one process.**

- ☐ 1. Adjusted employment tax return. Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.
- ☒ 2. Claim. Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

**Return You Are Correcting ...**

Check the type of return you are correcting:

☒ 941☐ 941-SS

Check the ONE quarter you are correcting:

☒ 1: January, February, March☐ 2: April, May, June☐ 3: July, August, September☐ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

2004 (YYYY)**Enter the date you discovered errors:**12/18/2008

(MM / DD / YYYY)

**Part 2: Complete the certifications.**

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

Note. If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5.

4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax for the current year and the overcollected social security and Medicare tax for current and prior years. For adjustments of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustment of social security tax and Medicare tax is for the employer's share only. I could not find the affected employees or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security and Medicare tax. For claims of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security and Medicare tax. For refunds of employee social security and Medicare tax overcollected in prior years, I also have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each employee did not give me a written consent to file a claim for the employee's share of social security and Medicare tax; or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

**Next** →

Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 1 (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY) 2004

Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)	Column 4 Tax correction
6. Wages, tips and other compensation (from line 2 of Form 941)	31,215.18	31,215.18	0.00	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Income tax withheld from wages, tips, and other compensation (from line 3 of Form 941)	2,047.70	2,047.70	0.00	Copy Column 3 here ▶ 0.00
8. Taxable social security wages (from line 5a, Column 1 of Form 941 or Form 941-SS)	31,215.18	31,215.18	0.00	× .124* = . <small>*If you are correcting your employer share only, use .062. See instructions.</small>
9. Taxable social security tips (from line 5b, Column 1 of Form 941 or Form 941-SS)	.	.	.	× .124* = . <small>*If you are correcting your employer share only, use .062. See instructions.</small>
10. Taxable Medicare wages and tips (from line 5c, Column 1 of Form 941 or Form 941-SS)	31,215.18	31,215.18	0.00	× .029* = . <small>*If you are correcting your employer share only, use .0145. See instructions.</small>
11. Tax adjustments (from lines 7a through 7c of Form 941 or Form 941-SS)	.	.	.	Copy Column 3 here ▶ .
12. Special addition to wages for federal income tax	0.00	270,054.27	(270,054.27)	See instructions (4,051.00)
13. Special addition to wages for social security taxes	0.00	270,054.27	(270,054.27)	See instructions 20,092.00
14. Special addition to wages for Medicare taxes	0.00	270,054.27	(270,054.27)	See instructions (4,699.00)
15. Combine the amounts on lines 7–14 of Column 4				28,842.00
16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9)	.	.	.	See instructions .
17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS)	.	.	.	See instructions .
17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS)				
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4				28,842.00

If line 18 is less than 0:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are filing this form. (If you are currently filing a Form 944 or Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 18 is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see *Amount You Owe* in the instructions.

Next →

SEE ATTACHED STATEMENT!!

(702) 491-0647

## 89146



Attachment to Form 941-X  
**DESERT VALLEY PAINTING & DRYWALL INC.**

**Taxpayer hereby requests the abatement of employment taxes (shown in Line 18 on Page 2 of this return), related penalties and interest, and the refund of the \$250 paid against such taxes.**

The government has erroneously determined that the taxpayer is the employer of certain workers (drywall installers) that are *'individually unidentifiable'*, according to the IRS Notice of Worker Classification. Further, the government has erroneously determined that the taxpayer is not entitled to relief from employment taxes under Section 530(a) of the Revenue Act of 1978.

In brief, the taxpayer (a Nevada licensed contractor) entered into a contractual agreement with Centennial Drywall Systems, Inc. (CDSI), also a Nevada licensed contractor, for services to be rendered by CDSI. The taxpayer paid funds due under the contract directly to and only to CDSI. Taxpayer did not make any payment to any individual engaged by CDSI, probably why the government cannot identify any individual.

CDSI treated its workers as independent contractors pursuant to a worker classification letter from the IRS. The workers / independent contractors were bound to CDSI pursuant to written agreement. This determination letter of CDSI was issued over a decade ago and was the industry-wide standard for drywall contractors. Apparently unable to reverse its own decision with respect to the workers of CDSI, the government is reneging on its own determination for this industry by pursuing those that contracted with CDSI.

Thus, the government has erroneously determined that the workers of CDSI, bound to CDSI by contract, are employees of the subject taxpayer. Further, the government refuses to recognize or grant relief under Section 530(a) to members of the drywall contractor industry pursuant to its own prior determination for CDSI.

In summary, this taxpayer is not an employer with respect to the contractual payments to CDSI and would be entitled to Section 530 relief in any event.

Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**  
(Rev. June 2009) Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN) Employer identification number <u>88-0244843</u>		
Name (not your trade name) <u>DESERT VALLEY PAINTING &amp; DRYWALL INC.</u>		
Trade name (if any) _____		
Address <u>3445 W LAKE MEAD BLVD. - SUITE 100</u>		
Number	Street	Suite or room number
<u>NORTH LAS VEGAS</u>	<u>NV</u>	<u>89032-5221</u>
City	State	ZIP code

**Return You Are Correcting ...**

Check the type of return you are correcting:

☒ 941☐ 941-SS

Check the ONE quarter you are correcting:

☐ 1: January, February, March☒ 2: April, May, June☐ 3: July, August, September☐ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

2004 (YYYY)**Enter the date you discovered errors:**12/18/2008  
(MM / DD / YYYY)

Use this form to correct errors you made on Form 941 or 941-SS for one quarter only. Type or print within the boxes. You MUST complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

**Part 1: Select ONLY one process.**

- ☐ 1. **Adjusted employment tax return.** Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.
- ☒ 2. **Claim.** Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

**Part 2: Complete the certifications.**

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

Note. If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5.

4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax for the current year and the overcollected social security and Medicare tax for current and prior years. For adjustments of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustment of social security tax and Medicare tax is for the employer's share only. I could not find the affected employees or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security and Medicare tax. For claims of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security and Medicare tax. For refunds of employee social security and Medicare tax overcollected in prior years, I also have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each employee did not give me a written consent to file a claim for the employee's share of social security and Medicare tax; or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

**Next** →

Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 2 (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY) 2004

**Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.**

	Column 1 <i>Total corrected amount (for ALL employees)</i>	Column 2 <i>Amount originally reported or as previously corrected (for ALL employees)</i>	Column 3 <i>Difference (If this amount is a negative number, use a minus sign.)</i>	Column 4 <i>Tax correction</i>
6. Wages, tips and other compensation (from line 2 of Form 941)	15,561.72	15,561.72	0.00	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Income tax withheld from wages, tips, and other compensation (from line 3 of Form 941)	1,849.82	1,849.82	0.00	Copy Column 3 here ▶ 0.00
8. Taxable social security wages (from line 5a, Column 1 of Form 941 or Form 941-SS)	15,561.72	15,561.72	0.00	× .124* = .
9. Taxable social security tips (from line 5b, Column 1 of Form 941 or Form 941-SS)	.	.	.	× .124* = .
10. Taxable Medicare wages and tips (from line 5c, Column 1 of Form 941 or Form 941-SS)	15,561.72	15,561.72	0.00	× .029* = .
11. Tax adjustments (from lines 7a through 7c of Form 941 or Form 941-SS)	.	.	.	Copy Column 3 here ▶ .
12. Special addition to wages for federal income tax	0.00	363,263.54	(363,263.54)	See instructions (5,449.00)
13. Special addition to wages for social security taxes	0.00	363,263.54	(363,263.54)	See instructions (27,027.00)
14. Special addition to wages for Medicare taxes	0.00	363,263.54	(363,263.54)	See instructions (6,321.00)
15. Combine the amounts on lines 7–14 of Column 4				38,797.00
16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9)				See instructions .
17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS)				See instructions .
17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS)				
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4				38,797.00

If line 18 is less than 0:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are filing this form. (If you are currently filing a Form 944 or Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 18 is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see *Amount You Owe* in the instructions.

Next ➞

SEE ATTACHED STATEMENT!!

## 89146

Attachment to Form 941-X  
**DESERT VALLEY PAINTING & DRYWALL INC.**

**Taxpayer hereby requests the abatement of employment taxes (shown in Line 18 on Page 2 of this return), related penalties and interest, and the refund of the \$250 paid against such taxes.**

The government has erroneously determined that the taxpayer is the employer of certain workers (drywall installers) that are *'individually unidentifiable'*, according to the IRS Notice of Worker Classification. Further, the government has erroneously determined that the taxpayer is not entitled to relief from employment taxes under Section 530(a) of the Revenue Act of 1978.

In brief, the taxpayer (a Nevada licensed contractor) entered into a contractual agreement with Centennial Drywall Systems, Inc. (CDSI), also a Nevada licensed contractor, for services to be rendered by CDSI. The taxpayer paid funds due under the contract directly to and only to CDSI. Taxpayer did not make any payment to any individual engaged by CDSI, probably why the government cannot identify any individual.

CDSI treated its workers as independent contractors pursuant to a worker classification letter from the IRS. The workers / independent contractors were bound to CDSI pursuant to written agreement. This determination letter of CDSI was issued over a decade ago and was the industry-wide standard for drywall contractors. Apparently unable to reverse its own decision with respect to the workers of CDSI, the government is reneging on its own determination for this industry by pursuing those that contracted with CDSI.

Thus, the government has erroneously determined that the workers of CDSI, bound to CDSI by contract, are employees of the subject taxpayer. Further, the government refuses to recognize or grant relief under Section 530(a) to members of the drywall contractor industry pursuant to its own prior determination for CDSI.

In summary, this taxpayer is not an employer with respect to the contractual payments to CDSI and would be entitled to Section 530 relief in any event.



Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**  
(Rev. June 2009) Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN)  
Employer identification number 88-0244843

Name (not your trade name) DESERT VALLEY PAINTING & DRYWALL INC.

Trade name (if any) \_\_\_\_\_

Address 3445 W LAKE MEAD BLVD. - SUITE 100  
Number Street Suite or room number

NORTH LAS VEGAS NV 89032-5221  
City State ZIP code

Use this form to correct errors you made on Form 941 or 941-SS for one quarter only. Type or print within the boxes. You MUST complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

**Part 1: Select ONLY one process.**

- ☐ 1. Adjusted employment tax return. Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.
- ☒ 2. Claim. Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

**Return You Are Correcting ...**

Check the type of return you are correcting:

☒ 941☐ 941-SS

Check the ONE quarter you are correcting:

☐ 1: January, February, March☐ 2: April, May, June☒ 3: July, August, September☐ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

2004 (YYYY)**Enter the date you discovered errors:**12/18/2008

(MM / DD / YYYY)

**Part 2: Complete the certifications.**

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

Note. If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5.

4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax for the current year and the overcollected social security and Medicare tax for current and prior years. For adjustments of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustment of social security tax and Medicare tax is for the employer's share only. I could not find the affected employees or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security and Medicare tax. For claims of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security and Medicare tax. For refunds of employee social security and Medicare tax overcollected in prior years, I also have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each employee did not give me a written consent to file a claim for the employee's share of social security and Medicare tax; or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

**Next** →



Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 3 (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY) 2004

**Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.**

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)	Column 4 Tax correction
6. Wages, tips and other compensation (from line 2 of Form 941)	5,987.00	5,987.00	0.00	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Income tax withheld from wages, tips, and other compensation (from line 3 of Form 941)	250.84	250.84	0.00	Copy Column 3 here ▶ 0.00
8. Taxable social security wages (from line 5a, Column 1 of Form 941 or Form 941-SS)	742.81	742.81	0.00	× .124* = . <small>*If you are correcting your employer share only, use .062. See instructions.</small>
9. Taxable social security tips (from line 5b, Column 1 of Form 941 or Form 941-SS)	.	.	.	× .124* = . <small>*If you are correcting your employer share only, use .062. See instructions.</small>
10. Taxable Medicare wages and tips (from line 5c, Column 1 of Form 941 or Form 941-SS)	173.62	173.62	0.00	× .029* = . <small>*If you are correcting your employer share only, use .0145. See instructions.</small>
11. Tax adjustments (from lines 7a through 7c of Form 941 or Form 941-SS)	.	.	.	Copy Column 3 here ▶ .
12. Special addition to wages for federal income tax	0.00	520,771.74	(520,771.74)	See instructions (7,812.00)
13. Special addition to wages for social security taxes	0.00	520,771.74	(520,771.74)	See instructions 38,745.00
14. Special addition to wages for Medicare taxes	0.00	520,771.74	(520,771.74)	See instructions (9,061.00)
15. Combine the amounts on lines 7–14 of Column 4				55,618.00
16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9)				See instructions .
17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS)				See instructions .
17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS)				
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4				55,618.00

If line 18 is less than 0:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are filing this form. (If you are currently filing a Form 944 or Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 18 is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see *Amount You Owe* in the instructions.

Next →

☐ 19. Check here if any corrections you entered on a line include both underreported and overreported amounts. Explain both your underreported and overreported amounts on line 21.

**21. You must give us a detailed explanation of how you determined your corrections. See the instructions.**

Under penalties of perjury, I declare that I have filed an original Form 941 or Form 941-SS and that I have examined this adjusted return or claim, including accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

(702) 491-0647

89146

Attachment to Form 941-X  
**DESERT VALLEY PAINTING & DRYWALL INC.**

**Taxpayer hereby requests the abatement of employment taxes (shown in Line 18 on Page 2 of this return), related penalties and interest, and the refund of the \$250 paid against such taxes.**

The government has erroneously determined that the taxpayer is the employer of certain workers (drywall installers) that are ***'individually unidentifiable'***, according to the IRS Notice of Worker Classification. Further, the government has erroneously determined that the taxpayer is not entitled to relief from employment taxes under Section 530(a) of the Revenue Act of 1978.

In brief, the taxpayer (a Nevada licensed contractor) entered into a contractual agreement with Centennial Drywall Systems, Inc. (CDSI), also a Nevada licensed contractor, for services to be rendered by CDSI. The taxpayer paid funds due under the contract directly to and only to CDSI. Taxpayer did not make any payment to any individual engaged by CDSI, probably why the government cannot identify any individual.

CDSI treated its workers as independent contractors pursuant to a worker classification letter from the IRS. The workers / independent contractors were bound to CDSI pursuant to written agreement. This determination letter of CDSI was issued over a decade ago and was the industry-wide standard for drywall contractors. Apparently unable to reverse its own decision with respect to the workers of CDSI, the government is reneging on its own determination for this industry by pursuing those that contracted with CDSI.

Thus, the government has erroneously determined that the workers of CDSI, bound to CDSI by contract, are employees of the subject taxpayer. Further, the government refuses to recognize or grant relief under Section 530(a) to members of the drywall contractor industry pursuant to its own prior determination for CDSI.

In summary, this taxpayer is not an employer with respect to the contractual payments to CDSI and would be entitled to Section 530 relief in any event.

Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**

(Rev. June 2009)

Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN) Employer identification number <u>88-0244843</u>		
Name (not your trade name) <u>DESERT VALLEY PAINTING &amp; DRYWALL INC.</u>		
Trade name (if any) _____		
Address <u>3445 W LAKE MEAD BLVD. - SUITE 100</u>		
Number	Street	Suite or room number
<u>NORTH LAS VEGAS</u>	<u>NV</u>	<u>89032-5221</u>
City	State	ZIP code

Use this form to correct errors you made on Form 941 or 941-SS for one quarter only. Type or print within the boxes. You MUST complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

**Part 1: Select ONLY one process.**

- ☐ 1. Adjusted employment tax return. Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.
- ☒ 2. Claim. Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

**Return You Are Correcting ...**

Check the type of return you are correcting:

☒ 941☐ 941-SS

Check the ONE quarter you are correcting:

☐ 1: January, February, March☐ 2: April, May, June☐ 3: July, August, September☒ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

2004 (YYYY)**Enter the date you discovered errors:**12/18/2008

(MM / DD / YYYY)

**Part 2: Complete the certifications.**

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

Note. If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5.

4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax for the current year and the overcollected social security and Medicare tax for current and prior years. For adjustments of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustment of social security tax and Medicare tax is for the employer's share only. I could not find the affected employees or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security and Medicare tax. For claims of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security and Medicare tax. For refunds of employee social security and Medicare tax overcollected in prior years, I also have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each employee did not give me a written consent to file a claim for the employee's share of social security and Medicare tax; or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

Next →

Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 4 (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY)
		2004

Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.

	Column 1	Column 2	Column 3	Column 4
	Total corrected amount (for ALL employees)	Amount originally reported or as previously corrected (for ALL employees)	Difference (If this amount is a negative number, use a minus sign.)	Tax correction
6. Wages, tips and other compensation (from line 2 of Form 941)	22,960.23	22,960.23	0.00	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Income tax withheld from wages, tips, and other compensation (from line 3 of Form 941)	667.05	667.05	0.00	Copy Column 3 here ▶ 0.00
8. Taxable social security wages (from line 5a, Column 1 of Form 941 or Form 941-SS)	22,960.23	22,960.23	0.00	× .124* = .
9. Taxable social security tips (from line 5b, Column 1 of Form 941 or Form 941-SS)	.	.	.	× .124* = .
10. Taxable Medicare wages and tips (from line 5c, Column 1 of Form 941 or Form 941-SS)	22,960.23	22,960.23	0.00	× .029* = .
11. Tax adjustments (from lines 7a through 7c of Form 941 or Form 941-SS)	.	.	.	Copy Column 3 here ▶ .
12. Special addition to wages for federal income tax	0.00	398,079.64	(398,079.64)	See instructions (5,971.00)
13. Special addition to wages for social security taxes	0.00	398,079.64	(398,079.64)	See instructions (29,617.00)
14. Special addition to wages for Medicare taxes	0.00	398,079.64	(398,079.64)	See instructions (6,927.00)
15. Combine the amounts on lines 7–14 of Column 4				42,515.00
16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9)	.	.	.	See instructions .
17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS)	.	.	.	See instructions .
17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS)				
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4				42,515.00

If line 18 is less than 0:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are filing this form. (If you are currently filing a Form 944 or Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 18 is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see *Amount You Owe* in the instructions.

Next →

SEE ATTACHED STATEMENT!!

(702) 491-0647

## 89146



Attachment to Form 941-X  
**DESERT VALLEY PAINTING & DRYWALL INC.**

**Taxpayer hereby requests the abatement of employment taxes (shown in Line 18 on Page 2 of this return), related penalties and interest, and the refund of the \$250 paid against such taxes.**

The government has erroneously determined that the taxpayer is the employer of certain workers (drywall installers) that are '*individually unidentifiable*', according to the IRS Notice of Worker Classification. Further, the government has erroneously determined that the taxpayer is not entitled to relief from employment taxes under Section 530(a) of the Revenue Act of 1978.

In brief, the taxpayer (a Nevada licensed contractor) entered into a contractual agreement with Centennial Drywall Systems, Inc. (CDSI), also a Nevada licensed contractor, for services to be rendered by CDSI. The taxpayer paid funds due under the contract directly to and only to CDSI. Taxpayer did not make any payment to any individual engaged by CDSI, probably why the government cannot identify any individual.

CDSI treated its workers as independent contractors pursuant to a worker classification letter from the IRS. The workers / independent contractors were bound to CDSI pursuant to written agreement. This determination letter of CDSI was issued over a decade ago and was the industry-wide standard for drywall contractors. Apparently unable to reverse its own decision with respect to the workers of CDSI, the government is reneging on its own determination for this industry by pursuing those that contracted with CDSI.

Thus, the government has erroneously determined that the workers of CDSI, bound to CDSI by contract, are employees of the subject taxpayer. Further, the government refuses to recognize or grant relief under Section 530(a) to members of the drywall contractor industry pursuant to its own prior determination for CDSI.

In summary, this taxpayer is not an employer with respect to the contractual payments to CDSI and would be entitled to Section 530 relief in any event.

Form  
(Rev. June 2009)**941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**

Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN)

Employer identification number 88-0244843Name (not your trade name) DESERT VALLEY PAINTING & DRYWALL INC.

Trade name (if any) \_\_\_\_\_

Address 3445 W LAKE MEAD BLVD. - SUITE 100

Number

Street

Suite or room number

NORTH LAS VEGASNV89032-5221

City

State

ZIP code

Use this form to correct errors you made on Form 941 or 941-SS for one quarter only. Type or print within the boxes. You MUST complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

**Part 1: Select ONLY one process.**

- ☐ 1. **Adjusted employment tax return.** Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.
- ☒ 2. **Claim.** Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

**Return You Are Correcting ...**

Check the type of return you are correcting:

☒ 941☐ 941-SS

Check the ONE quarter you are correcting:

☒ 1: January, February, March☐ 2: April, May, June☐ 3: July, August, September☐ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

2005

(YYYY)

**Enter the date you discovered errors:**12/18/2008

(MM / DD / YYYY)

**Part 2: Complete the certifications.**

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

Note. If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5.

4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax for the current year and the overcollected social security and Medicare tax for current and prior years. For adjustments of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustment of social security tax and Medicare tax is for the employer's share only. I could not find the affected employees or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security and Medicare tax. For claims of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security and Medicare tax. For refunds of employee social security and Medicare tax overcollected in prior years, I also have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each employee did not give me a written consent to file a claim for the employee's share of social security and Medicare tax; or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

**Next** →

Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 1 (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY) 2005

**Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.**

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)	Column 4 Tax correction
6. Wages, tips and other compensation (from line 2 of Form 941)	101,467.00	101,467.00	0.00	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Income tax withheld from wages, tips, and other compensation (from line 3 of Form 941)	10,904.06	10,904.06	0.00	Copy Column 3 here ▶ 0.00
8. Taxable social security wages (from line 5a, Column 1 of Form 941 or Form 941-SS)	101,467.00	101,467.00	0.00	× .124* = . <small>*If you are correcting your employer share only, use .062. See instructions.</small>
9. Taxable social security tips (from line 5b, Column 1 of Form 941 or Form 941-SS)	.	.	.	× .124* = . <small>*If you are correcting your employer share only, use .062. See instructions.</small>
10. Taxable Medicare wages and tips (from line 5c, Column 1 of Form 941 or Form 941-SS)	101,467.00	101,467.00	0.00	× .029* = . <small>*If you are correcting your employer share only, use .0145. See instructions.</small>
11. Tax adjustments (from lines 7a through 7c of Form 941 or Form 941-SS)	.	.	.	Copy Column 3 here ▶ .
12. Special addition to wages for federal income tax	0.00	312,452.60	(312,452.60)	See instructions (4,687.00)
13. Special addition to wages for social security taxes	0.00	312,452.60	(312,452.60)	See instructions (23,246.00)
14. Special addition to wages for Medicare taxes	0.00	312,452.60	(312,452.60)	See instructions (5,437.00)
15. Combine the amounts on lines 7–14 of Column 4				33,370.00
16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9)	.	.	.	See instructions .
17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS)	.	.	.	See instructions .
17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS)				
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4				33,370.00

If line 18 is less than 0:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are filing this form. (If you are currently filing a Form 944 or Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 18 is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see *Amount You Owe* in the instructions.

Next ➡

SEE ATTACHED STATEMENT!!

Best daytime phone (702) 491-0647

## ZIP code 89146

Attachment to Form 941-X  
**DESERT VALLEY PAINTING & DRYWALL INC.**

**Taxpayer hereby requests the abatement of employment taxes (shown in Line 18 on Page 2 of this return), related penalties and interest, and the refund of the \$250 paid against such taxes.**

The government has erroneously determined that the taxpayer is the employer of certain workers (drywall installers) that are '*individually unidentifiable*', according to the IRS Notice of Worker Classification. Further, the government has erroneously determined that the taxpayer is not entitled to relief from employment taxes under Section 530(a) of the Revenue Act of 1978.

In brief, the taxpayer (a Nevada licensed contractor) entered into a contractual agreement with Centennial Drywall Systems, Inc. (CDSI), also a Nevada licensed contractor, for services to be rendered by CDSI. The taxpayer paid funds due under the contract directly to and only to CDSI. Taxpayer did not make any payment to any individual engaged by CDSI, probably why the government cannot identify any individual.

CDSI treated its workers as independent contractors pursuant to a worker classification letter from the IRS. The workers / independent contractors were bound to CDSI pursuant to written agreement. This determination letter of CDSI was issued over a decade ago and was the industry-wide standard for drywall contractors. Apparently unable to reverse its own decision with respect to the workers of CDSI, the government is reneging on its own determination for this industry by pursuing those that contracted with CDSI.

Thus, the government has erroneously determined that the workers of CDSI, bound to CDSI by contract, are employees of the subject taxpayer. Further, the government refuses to recognize or grant relief under Section 530(a) to members of the drywall contractor industry pursuant to its own prior determination for CDSI.

In summary, this taxpayer is not an employer with respect to the contractual payments to CDSI and would be entitled to Section 530 relief in any event.



Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**

(Rev. June 2009)

Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN) Employer identification number <u>88-0244843</u>		
Name (not your trade name) <u>DESERT VALLEY PAINTING &amp; DRYWALL INC.</u>		
Trade name (if any) _____		
Address <u>3445 W LAKE MEAD BLVD. - SUITE 100</u>		
Number	Street	Suite or room number
<u>NORTH LAS VEGAS</u>	<u>NV</u>	<u>89032-5221</u>
City	State	ZIP code

Use this form to correct errors you made on Form 941 or 941-SS for one quarter only. Type or print within the boxes. You MUST complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

**Part 1: Select ONLY one process.**

- ☐ 1. Adjusted employment tax return. Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.
- ☒ 2. Claim. Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

**Return You Are Correcting ...**

Check the type of return you are correcting:

- ☒ 941
- ☐ 941-SS

Check the ONE quarter you are correcting:

- ☐ 1: January, February, March
- ☒ 2: April, May, June
- ☐ 3: July, August, September
- ☐ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

2005 (YYYY)

**Enter the date you discovered errors:**

12/18/2008  
(MM / DD / YYYY)

**Part 2: Complete the certifications.**

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

Note. If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5.

4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax for the current year and the overcollected social security and Medicare tax for current and prior years. For adjustments of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustment of social security tax and Medicare tax is for the employer's share only. I could not find the affected employees or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security and Medicare tax. For claims of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security and Medicare tax. For refunds of employee social security and Medicare tax overcollected in prior years, I also have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each employee did not give me a written consent to file a claim for the employee's share of social security and Medicare tax; or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

Next →



Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 2 (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY) 2005

Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)	Column 4 Tax correction
6. Wages, tips and other compensation (from line 2 of Form 941)	113,460.30	113,460.30	0.00	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Income tax withheld from wages, tips, and other compensation (from line 3 of Form 941)	12,148.19	12,148.19	0.00	Copy Column 3 here ▶ 0.00
8. Taxable social security wages (from line 5a, Column 1 of Form 941 or Form 941-SS)	113,460.30	113,460.30	0.00	× .124* = .
9. Taxable social security tips (from line 5b, Column 1 of Form 941 or Form 941-SS)	.	.	.	× .124* = .
10. Taxable Medicare wages and tips (from line 5c, Column 1 of Form 941 or Form 941-SS)	113,460.30	113,460.30	0.00	× .029* = .
11. Tax adjustments (from lines 7a through 7c of Form 941 or Form 941-SS)	.	.	.	Copy Column 3 here ▶ .
12. Special addition to wages for federal income tax	0.00	275,528.03	(275,528.03)	See instructions (4,133.00)
13. Special addition to wages for social security taxes	0.00	275,528.03	(275,528.03)	See instructions (20,499.00)
14. Special addition to wages for Medicare taxes	0.00	275,528.03	(275,528.03)	See instructions (4,794.00)
15. Combine the amounts on lines 7–14 of Column 4				29,426.00
16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9)	.	.	.	See instructions .
17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS)	.	.	.	See instructions .
17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS)				
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4				(29,426.00)

If line 18 is less than 0:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are filing this form. (If you are currently filing a Form 944 or Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 18 is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see *Amount You Owe* in the instructions.

Next ➡

SEE ATTACHED STATEMENT!!

Best daytime phone (702) 491-0647

## ZIP code 89146

Attachment to Form 941-X  
**DESERT VALLEY PAINTING & DRYWALL INC.**

**Taxpayer hereby requests the abatement of employment taxes (shown in Line 18 on Page 2 of this return), related penalties and interest, and the refund of the \$250 paid against such taxes.**

The government has erroneously determined that the taxpayer is the employer of certain workers (drywall installers) that are '*individually unidentifiable*', according to the IRS Notice of Worker Classification. Further, the government has erroneously determined that the taxpayer is not entitled to relief from employment taxes under Section 530(a) of the Revenue Act of 1978.

In brief, the taxpayer (a Nevada licensed contractor) entered into a contractual agreement with Centennial Drywall Systems, Inc. (CDSI), also a Nevada licensed contractor, for services to be rendered by CDSI. The taxpayer paid funds due under the contract directly to and only to CDSI. Taxpayer did not make any payment to any individual engaged by CDSI, probably why the government cannot identify any individual.

CDSI treated its workers as independent contractors pursuant to a worker classification letter from the IRS. The workers / independent contractors were bound to CDSI pursuant to written agreement. This determination letter of CDSI was issued over a decade ago and was the industry-wide standard for drywall contractors. Apparently unable to reverse its own decision with respect to the workers of CDSI, the government is reneging on its own determination for this industry by pursuing those that contracted with CDSI.

Thus, the government has erroneously determined that the workers of CDSI, bound to CDSI by contract, are employees of the subject taxpayer. Further, the government refuses to recognize or grant relief under Section 530(a) to members of the drywall contractor industry pursuant to its own prior determination for CDSI.

In summary, this taxpayer is not an employer with respect to the contractual payments to CDSI and would be entitled to Section 530 relief in any event.

Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**

(Rev. June 2009)

Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN) Employer identification number <u>88-0244843</u>		
Name (not your trade name) <u>DESERT VALLEY PAINTING &amp; DRYWALL INC.</u>		
Trade name (if any) _____		
Address <u>3445 W LAKE MEAD BLVD. - SUITE 100</u>		
Number	Street	Suite or room number
<u>NORTH LAS VEGAS</u>	<u>NV</u>	<u>89032-5221</u>
City	State	ZIP code

Use this form to correct errors you made on Form 941 or 941-SS for **one quarter only**. Type or print within the boxes. You **MUST** complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

**Part 1: Select ONLY one process.**

- ☐ 1. **Adjusted employment tax return.** Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.
- ☒ 2. **Claim.** Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

**Return You Are Correcting ...**

Check the type of return you are correcting:

☒ 941☐ 941-SS

Check the ONE quarter you are correcting:

☐ 1: January, February, March☐ 2: April, May, June☒ 3: July, August, September☐ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

2005 (YYYY)**Enter the date you discovered errors:**12/18/2008

(MM / DD / YYYY)

**Part 2: Complete the certifications.**

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

Note. If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5.

4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax for the current year and the overcollected social security and Medicare tax for current and prior years. For adjustments of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustment of social security tax and Medicare tax is for the employer's share only. I could not find the affected employees or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security and Medicare tax. For claims of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security and Medicare tax. For refunds of employee social security and Medicare tax overcollected in prior years, I also have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each employee did not give me a written consent to file a claim for the employee's share of social security and Medicare tax; or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

**Next** ➔

Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 3 (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY) 2005

**Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.**

	Column 1	Column 2	Column 3	Column 4
	Total corrected amount (for ALL employees)	Amount originally reported or as previously corrected (for ALL employees)	Difference (If this amount is a negative number, use a minus sign.)	Tax correction
6. Wages, tips and other compensation (from line 2 of Form 941)	113,531.62	113,531.62	0.00	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Income tax withheld from wages, tips, and other compensation (from line 3 of Form 941)	12,891.92	12,891.92	0.00	Copy Column 3 here ▶ 0.00
8. Taxable social security wages (from line 5a, Column 1 of Form 941 or Form 941-SS)	113,531.62	113,531.62	0.00	× .124* =
9. Taxable social security tips (from line 5b, Column 1 of Form 941 or Form 941-SS)				× .124* =
10. Taxable Medicare wages and tips (from line 5c, Column 1 of Form 941 or Form 941-SS)	113,531.62	113,531.62	0.00	× .029* =
11. Tax adjustments (from lines 7a through 7c of Form 941 or Form 941-SS)				Copy Column 3 here ▶
12. Special addition to wages for federal income tax	0.00	247,278.56	(247,278.56)	See instructions (3,709.00)
13. Special addition to wages for social security taxes	0.00	247,278.56	(247,278.56)	See instructions (18,398.00)
14. Special addition to wages for Medicare taxes	0.00	247,278.56	(247,278.56)	See instructions (4,302.00)
15. Combine the amounts on lines 7–14 of Column 4				26,409.00
16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9)				See instructions
17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS)				See instructions
17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS)				
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4				(26,409.00)

If line 18 is less than 0:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are filing this form. (If you are currently filing a Form 944 or Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 18 is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see *Amount You Owe* in the instructions.

Next ➡



SEE ATTACHED STATEMENT!!

Form **941-X** (Rev. 6-2009)



Attachment to Form 941-X  
**DESERT VALLEY PAINTING & DRYWALL INC.**

**Taxpayer hereby requests the abatement of employment taxes (shown in Line 18 on Page 2 of this return), related penalties and interest, and the refund of the \$250 paid against such taxes.**

The government has erroneously determined that the taxpayer is the employer of certain workers (drywall installers) that are *'individually unidentifiable'*, according to the IRS Notice of Worker Classification. Further, the government has erroneously determined that the taxpayer is not entitled to relief from employment taxes under Section 530(a) of the Revenue Act of 1978.

In brief, the taxpayer (a Nevada licensed contractor) entered into a contractual agreement with Centennial Drywall Systems, Inc. (CDSI), also a Nevada licensed contractor, for services to be rendered by CDSI. The taxpayer paid funds due under the contract directly to and only to CDSI. Taxpayer did not make any payment to any individual engaged by CDSI, probably why the government cannot identify any individual.

CDSI treated its workers as independent contractors pursuant to a worker classification letter from the IRS. The workers / independent contractors were bound to CDSI pursuant to written agreement. This determination letter of CDSI was issued over a decade ago and was the industry-wide standard for drywall contractors. Apparently unable to reverse its own decision with respect to the workers of CDSI, the government is reneging on its own determination for this industry by pursuing those that contracted with CDSI.

Thus, the government has erroneously determined that the workers of CDSI, bound to CDSI by contract, are employees of the subject taxpayer. Further, the government refuses to recognize or grant relief under Section 530(a) to members of the drywall contractor industry pursuant to its own prior determination for CDSI.

In summary, this taxpayer is not an employer with respect to the contractual payments to CDSI and would be entitled to Section 530 relief in any event.

Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**  
 (Rev. June 2009) Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN)  
 Employer identification number 88-0244843

Name (not your trade name) DESERT VALLEY PAINTING & DRYWALL INC.

Trade name (if any) \_\_\_\_\_

Address 3445 W LAKE MEAD BLVD. - SUITE 100  
Number Street Suite or room number

NORTH LAS VEGAS NV 89032-5221  
City State ZIP code

Use this form to correct errors you made on Form 941 or 941-SS for one quarter only. Type or print within the boxes. You MUST complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

**Part 1: Select ONLY one process.**

- ☐ 1. Adjusted employment tax return. Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.
- ☒ 2. Claim. Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

**Return You Are Correcting ...**

Check the type of return you are correcting:

☒ 941☐ 941-SS

Check the ONE quarter you are correcting:

☐ 1: January, February, March☐ 2: April, May, June☐ 3: July, August, September☒ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

2005 (YYY)**Enter the date you discovered errors:**12/18/2008

(MM / DD / YYYY)

**Part 2: Complete the certifications.**

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

Note. If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5.

4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax for the current year and the overcollected social security and Medicare tax for current and prior years. For adjustments of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustment of social security tax and Medicare tax is for the employer's share only. I could not find the affected employees or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security and Medicare tax. For claims of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security and Medicare tax. For refunds of employee social security and Medicare tax overcollected in prior years, I also have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each employee did not give me a written consent to file a claim for the employee's share of social security and Medicare tax; or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

**Next** →

Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 4 (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY) 2005

**Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.**

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)	Column 4 Tax correction
6. Wages, tips and other compensation (from line 2 of Form 941)	145,987.11	145,987.11	0.00	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Income tax withheld from wages, tips, and other compensation (from line 3 of Form 941)	14,204.17	14,204.17	0.00	Copy Column 3 here ▶ 0.00
8. Taxable social security wages (from line 5a, Column 1 of Form 941 or Form 941-SS)	145,987.11	145,987.11	0.00	× .124* =
9. Taxable social security tips (from line 5b, Column 1 of Form 941 or Form 941-SS)	.	.	.	× .124* =
10. Taxable Medicare wages and tips (from line 5c, Column 1 of Form 941 or Form 941-SS)	145,987.11	145,987.11	0.00	× .029* =
11. Tax adjustments (from lines 7a through 7c of Form 941 or Form 941-SS)	.	.	.	Copy Column 3 here ▶
12. Special addition to wages for federal income tax	0.00	648,698.60	(648,698.60)	See instructions (9,730.00)
13. Special addition to wages for social security taxes	0.00	648,698.60	(648,698.60)	See instructions (48,263.00)
14. Special addition to wages for Medicare taxes	0.00	648,698.60	(648,698.60)	See instructions (11,288.00)
15. Combine the amounts on lines 7–14 of Column 4				(69,281.00)
16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9)	.	.	.	See instructions
17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS)	.	.	.	See instructions
17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS)				
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4				(69,281.00)

If line 18 is less than 0:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are filing this form. (If you are currently filing a Form 944 or Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 18 is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see *Amount You Owe* in the instructions.

Next ➡

SEE ATTACHED STATEMENT!!

Best daytime phone (702) 491-0647

## ZIP code 89146

Attachment to Form 941-X  
**DESERT VALLEY PAINTING & DRYWALL INC.**

**Taxpayer hereby requests the abatement of employment taxes (shown in Line 18 on Page 2 of this return), related penalties and interest, and the refund of the \$250 paid against such taxes.**

The government has erroneously determined that the taxpayer is the employer of certain workers (drywall installers) that are '*individually unidentifiable*', according to the IRS Notice of Worker Classification. Further, the government has erroneously determined that the taxpayer is not entitled to relief from employment taxes under Section 530(a) of the Revenue Act of 1978.

In brief, the taxpayer (a Nevada licensed contractor) entered into a contractual agreement with Centennial Drywall Systems, Inc. (CDSI), also a Nevada licensed contractor, for services to be rendered by CDSI. The taxpayer paid funds due under the contract directly to and only to CDSI. Taxpayer did not make any payment to any individual engaged by CDSI, probably why the government cannot identify any individual.

CDSI treated its workers as independent contractors pursuant to a worker classification letter from the IRS. The workers / independent contractors were bound to CDSI pursuant to written agreement. This determination letter of CDSI was issued over a decade ago and was the industry-wide standard for drywall contractors. Apparently unable to reverse its own decision with respect to the workers of CDSI, the government is reneging on its own determination for this industry by pursuing those that contracted with CDSI.

Thus, the government has erroneously determined that the workers of CDSI, bound to CDSI by contract, are employees of the subject taxpayer. Further, the government refuses to recognize or grant relief under Section 530(a) to members of the drywall contractor industry pursuant to its own prior determination for CDSI.

In summary, this taxpayer is not an employer with respect to the contractual payments to CDSI and would be entitled to Section 530 relief in any event.



Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**  
(Rev. June 2009) Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN)  
Employer identification number 88-0244843

Name (not your trade name) DESERT VALLEY PAINTING & DRYWALL INC.

Trade name (if any) \_\_\_\_\_

Address 3445 W LAKE MEAD BLVD. - SUITE 100  
Number Street Suite or room number

NORTH LAS VEGAS NV 89032-5221  
City State ZIP code

Use this form to correct errors you made on Form 941 or 941-SS for one quarter only. Type or print within the boxes. You MUST complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

**Part 1: Select ONLY one process.**

- ☐ 1. **Adjusted employment tax return.** Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.
- ☒ 2. **Claim.** Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

**Return You Are Correcting ...**

Check the type of return you are correcting:

☒ 941☐ 941-SS

Check the ONE quarter you are correcting:

☒ 1: January, February, March☐ 2: April, May, June☐ 3: July, August, September☐ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

2006 (YYYY)

**Enter the date you discovered errors:**

12/18/2008

(MM / DD / YYYY)

**Part 2: Complete the certifications.**

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.
- Note.* If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5.
4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:
- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax for the current year and the overcollected social security and Medicare tax for current and prior years. For adjustments of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustment of social security tax and Medicare tax is for the employer's share only. I could not find the affected employees or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.
5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:
- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security and Medicare tax. For claims of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security and Medicare tax. For refunds of employee social security and Medicare tax overcollected in prior years, I also have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each employee did not give me a written consent to file a claim for the employee's share of social security and Medicare tax; or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

Next →

Name (not your trade name)	Employer identification number (EIN)	Correcting quarter <u>1</u> (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY) 2006

**Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.**

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)	Column 4 Tax correction
6. Wages, tips and other compensation (from line 2 of Form 941)	130,129.14	130,129.14	0.00	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Income tax withheld from wages, tips, and other compensation (from line 3 of Form 941)	10,051.51	10,051.51	0.00	Copy Column 3 here $\rightarrow$ 0.00
8. Taxable social security wages (from line 5a, Column 1 of Form 941 or Form 941-SS)	130,129.14	130,129.14	0.00	$\times .124^* =$ . <small>*If you are correcting your employer share only, use .062. See instructions.</small>
9. Taxable social security tips (from line 5b, Column 1 of Form 941 or Form 941-SS)	.	.	.	$\times .124^* =$ . <small>*If you are correcting your employer share only, use .062. See instructions.</small>
10. Taxable Medicare wages and tips (from line 5c, Column 1 of Form 941 or Form 941-SS)	130,129.14	130,129.14	0.00	$\times .029^* =$ . <small>*If you are correcting your employer share only, use .0145. See instructions.</small>
11. Tax adjustments (from lines 7a through 7c of Form 941 or Form 941-SS)	.	.	.	Copy Column 3 here $\rightarrow$ .
12. Special addition to wages for federal income tax	0.00	328,075.23	(328,075.23)	See instructions (4,921.00)
13. Special addition to wages for social security taxes	0.00	328,075.23	(328,075.23)	See instructions 24,409.00
14. Special addition to wages for Medicare taxes	0.00	328,075.23	(328,075.23)	See instructions (5,708.00)
15. Combine the amounts on lines 7-14 of Column 4				35,038.00
16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9)	.	.	.	See instructions .
17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS)	.	.	.	See instructions .
17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS)				
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4				35,038.00

If line 18 is less than 0:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are filing this form. (If you are currently filing a Form 944 or Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 18 is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see *Amount You Owe* in the instructions.

Next  $\rightarrow$

SEE ATTACHED STATEMENT!!

(702) 491-0647

89146

Attachment to Form 941-X  
**DESERT VALLEY PAINTING & DRYWALL INC.**

**Taxpayer hereby requests the abatement of employment taxes (shown in Line 18 on Page 2 of this return), related penalties and interest, and the refund of the \$250 paid against such taxes.**

The government has erroneously determined that the taxpayer is the employer of certain workers (drywall installers) that are **'individually unidentifiable'**, according to the IRS Notice of Worker Classification. Further, the government has erroneously determined that the taxpayer is not entitled to relief from employment taxes under Section 530(a) of the Revenue Act of 1978.

In brief, the taxpayer (a Nevada licensed contractor) entered into a contractual agreement with Centennial Drywall Systems, Inc. (CDSI), also a Nevada licensed contractor, for services to be rendered by CDSI. The taxpayer paid funds due under the contract directly to and only to CDSI. Taxpayer did not make any payment to any individual engaged by CDSI, probably why the government cannot identify any individual.

CDSI treated its workers as independent contractors pursuant to a worker classification letter from the IRS. The workers / independent contractors were bound to CDSI pursuant to written agreement. This determination letter of CDSI was issued over a decade ago and was the industry-wide standard for drywall contractors. Apparently unable to reverse its own decision with respect to the workers of CDSI, the government is reneging on its own determination for this industry by pursuing those that contracted with CDSI.

Thus, the government has erroneously determined that the workers of CDSI, bound to CDSI by contract, are employees of the subject taxpayer. Further, the government refuses to recognize or grant relief under Section 530(a) to members of the drywall contractor industry pursuant to its own prior determination for CDSI.

In summary, this taxpayer is not an employer with respect to the contractual payments to CDSI and would be entitled to Section 530 relief in any event.



Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**

(Rev. June 2009)

Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN) Employer identification number <u>88-0244843</u>		
Name (not your trade name) <u>DESERT VALLEY PAINTING &amp; DRYWALL INC.</u>		
Trade name (if any) _____		
Address <u>3445 W LAKE MEAD BLVD. - SUITE 100</u>		
Number	Street	Suite or room number
<u>NORTH LAS VEGAS</u>	<u>NV</u>	<u>89032-5221</u>
City	State	ZIP code

Use this form to correct errors you made on Form 941 or 941-SS for one quarter only. Type or print within the boxes. You MUST complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

**Part 1: Select ONLY one process.**

- ☐ 1. **Adjusted employment tax return.** Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.
- ☒ 2. **Claim.** Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

**Return You Are Correcting ...**

Check the type of return you are correcting:

☒ 941☐ 941-SS

Check the ONE quarter you are correcting:

☐ 1: January, February, March☒ 2: April, May, June☐ 3: July, August, September☐ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

 (YYYY)**Enter the date you discovered errors:**

(MM / DD / YYYY)

**Part 2: Complete the certifications.**

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

Note. If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5.

4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax for the current year and the overcollected social security and Medicare tax for current and prior years. For adjustments of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustment of social security tax and Medicare tax is for the employer's share only. I could not find the affected employees or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security and Medicare tax. For claims of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security and Medicare tax. For refunds of employee social security and Medicare tax overcollected in prior years, I also have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each employee did not give me a written consent to file a claim for the employee's share of social security and Medicare tax; or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

**Next** →



Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 2 (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY) 2006

**Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.**

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)	Column 4 Tax correction
6. Wages, tips and other compensation (from line 2 of Form 941)	121,394.00	121,394.00	0.00	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Income tax withheld from wages, tips, and other compensation (from line 3 of Form 941)	6,636.14	6,636.14	0.00	Copy Column 3 here ▶ 0.00
8. Taxable social security wages (from line 5a, Column 1 of Form 941 or Form 941-SS)	116,109.85	116,109.85	0.00	× .124* = . <small>*If you are correcting your employer share only, use .062. See instructions.</small>
9. Taxable social security tips (from line 5b, Column 1 of Form 941 or Form 941-SS)	.	.	.	× .124* = . <small>*If you are correcting your employer share only, use .062. See instructions.</small>
10. Taxable Medicare wages and tips (from line 5c, Column 1 of Form 941 or Form 941-SS)	116,109.85	116,109.85	0.00	× .029* = . <small>*If you are correcting your employer share only, use .0145. See instructions.</small>
11. Tax adjustments (from lines 7a through 7c of Form 941 or Form 941-SS)	.	.	.	Copy Column 3 here ▶ .
12. Special addition to wages for federal income tax	0.00	289,304.43	(289,304.43)	See instructions (4,339.00)
13. Special addition to wages for social security taxes	0.00	289,304.43	(289,304.43)	See instructions (21,524.00)
14. Special addition to wages for Medicare taxes	0.00	289,304.43	(289,304.43)	See instructions (5,034.00)
15. Combine the amounts on lines 7–14 of Column 4				(30,897.00)
16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9)				See instructions .
17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS)				See instructions .
17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS)				
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4				(30,897.00)

If line 18 is less than 0:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are filing this form. (If you are currently filing a Form 944 or Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 18 is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see *Amount You Owe* in the instructions.

Next →

SEE ATTACHED STATEMENT!!

## 89146

Attachment to Form 941-X  
**DESERT VALLEY PAINTING & DRYWALL INC.**

**Taxpayer hereby requests the abatement of employment taxes (shown in Line 18 on Page 2 of this return), related penalties and interest, and the refund of the \$250 paid against such taxes.**

The government has erroneously determined that the taxpayer is the employer of certain workers (drywall installers) that are '*individually unidentifiable*', according to the IRS Notice of Worker Classification. Further, the government has erroneously determined that the taxpayer is not entitled to relief from employment taxes under Section 530(a) of the Revenue Act of 1978.

In brief, the taxpayer (a Nevada licensed contractor) entered into a contractual agreement with Centennial Drywall Systems, Inc. (CDSI), also a Nevada licensed contractor, for services to be rendered by CDSI. The taxpayer paid funds due under the contract directly to and only to CDSI. Taxpayer did not make any payment to any individual engaged by CDSI, probably why the government cannot identify any individual.

CDSI treated its workers as independent contractors pursuant to a worker classification letter from the IRS. The workers / independent contractors were bound to CDSI pursuant to written agreement. This determination letter of CDSI was issued over a decade ago and was the industry-wide standard for drywall contractors. Apparently unable to reverse its own decision with respect to the workers of CDSI, the government is reneging on its own determination for this industry by pursuing those that contracted with CDSI.

Thus, the government has erroneously determined that the workers of CDSI, bound to CDSI by contract, are employees of the subject taxpayer. Further, the government refuses to recognize or grant relief under Section 530(a) to members of the drywall contractor industry pursuant to its own prior determination for CDSI.

In summary, this taxpayer is not an employer with respect to the contractual payments to CDSI and would be entitled to Section 530 relief in any event.

Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**  
 (Rev. June 2009) Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN)

Employer identification number 88-0244843Name (not your trade name) DESERT VALLEY PAINTING & DRYWALL INC.

Trade name (if any) \_\_\_\_\_

Address 3445 W LAKE MEAD BLVD. - SUITE 100

Number	Street	Suite or room number
<u>NORTH LAS VEGAS</u>	<u>NV</u>	<u>89032-5221</u>
City	State	ZIP code

Use this form to correct errors you made on Form 941 or 941-SS for one quarter only. Type or print within the boxes. You MUST complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

**Part 1: Select ONLY one process.**

- ☐ 1. Adjusted employment tax return. Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.
- ☒ 2. Claim. Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

**Return You Are Correcting ...**

Check the type of return you are correcting:

☒ 941☐ 941-SS

Check the ONE quarter you are correcting:

☐ 1: January, February, March☐ 2: April, May, June☒ 3: July, August, September☐ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

2006 (YYYY)**Enter the date you discovered errors:**12/18/2008

(MM / DD / YYYY)

**Part 2: Complete the certifications.**

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

Note. If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5.

4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax for the current year and the overcollected social security and Medicare tax for current and prior years. For adjustments of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustment of social security tax and Medicare tax is for the employer's share only. I could not find the affected employees or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security and Medicare tax. For claims of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security and Medicare tax. For refunds of employee social security and Medicare tax overcollected in prior years, I also have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each employee did not give me a written consent to file a claim for the employee's share of social security and Medicare tax; or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

**Next** ➔



Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 3 (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY) 2006

**Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.**

	Column 1	Column 2	Column 3	Column 4
	Total corrected amount (for ALL employees)	Amount originally reported or as previously corrected (for ALL employees)	Difference (If this amount is a negative number, use a minus sign.)	Tax correction
6. Wages, tips and other compensation (from line 2 of Form 941)	106,413.45	106,413.45	= 0.00	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Income tax withheld from wages, tips, and other compensation (from line 3 of Form 941)	6,492.64	6,492.64	= 0.00	Copy Column 3 here ▶ 0.00
8. Taxable social security wages (from line 5a, Column 1 of Form 941 or Form 941-SS)	103,214.42	103,214.42	= 0.00	× .124* = . <small>*If you are correcting your employer share only, use .062. See instructions.</small>
9. Taxable social security tips (from line 5b, Column 1 of Form 941 or Form 941-SS)			=	× .124* = . <small>*If you are correcting your employer share only, use .062. See instructions.</small>
10. Taxable Medicare wages and tips (from line 5c, Column 1 of Form 941 or Form 941-SS)	103,214.42	103,214.42	= 0.00	× .029* = . <small>*If you are correcting your employer share only, use .0145. See instructions.</small>
11. Tax adjustments (from lines 7a through 7c of Form 941 or Form 941-SS)			=	Copy Column 3 here ▶
12. Special addition to wages for federal income tax	0.00	259,642.49	= (259,642.49)	See instructions (3,895.00)
13. Special addition to wages for social security taxes	0.00	259,642.49	= (259,642.49)	See instructions (19,317.00)
14. Special addition to wages for Medicare taxes	0.00	259,642.49	= (259,642.49)	See instructions (4,518.00)
15. Combine the amounts on lines 7-14 of Column 4				(27,730.00)
16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9)			=	See instructions
17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS)			=	See instructions
17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS)			=	
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4				(27,730.00)

If line 18 is less than 0:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are filing this form. (If you are currently filing a Form 944 or Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 18 is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see *Amount You Owe* in the instructions.

Next ➡



Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 3 (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY) 2006

**Part 4: Explain your corrections for this quarter.**

- ☐ 19. Check here if any corrections you entered on a line include both underreported and overreported amounts. Explain both your underreported and overreported amounts on line 21.
- ☒ 20. Check here if any corrections involve reclassified workers. Explain on line 21.
21. You must give us a detailed explanation of how you determined your corrections. See the instructions.

SEE ATTACHED STATEMENT!!

**Part 5: Sign here. You must complete all three pages of this form and sign it.**

Under penalties of perjury, I declare that I have filed an original Form 941 or Form 941-SS and that I have examined this adjusted return or claim, including accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign your name here

Print your name here

JODI ZACHARY

Print your title here

PRESIDENT

Date

7-11-09

Best daytime phone

(702) 491-0647

**Paid preparer's use only**

Check if you are self-employed

☐

Preparer's name

GERALD ANDREWS

Preparer's SSN/PTIN

P00561658

Preparer's signature

Date

7-7-09

Firm's name (or yours if self-employed)

BERT PURDY &amp; ASSOCIATES

EIN

88-0483015

Address

2300 SOUTH JONES BLVD.

Phone

(702) 873-8340

City

LAS VEGAS

State

NV

ZIP code

89146

Attachment to Form 941-X  
**DESERT VALLEY PAINTING & DRYWALL INC.**

**Taxpayer hereby requests the abatement of employment taxes (shown in Line 18 on Page 2 of this return), related penalties and interest, and the refund of the \$250 paid against such taxes.**

The government has erroneously determined that the taxpayer is the employer of certain workers (drywall installers) that are *'individually unidentifiable'*, according to the IRS Notice of Worker Classification. Further, the government has erroneously determined that the taxpayer is not entitled to relief from employment taxes under Section 530(a) of the Revenue Act of 1978.

In brief, the taxpayer (a Nevada licensed contractor) entered into a contractual agreement with Centennial Drywall Systems, Inc. (CDSI), also a Nevada licensed contractor, for services to be rendered by CDSI. The taxpayer paid funds due under the contract directly to and only to CDSI. Taxpayer did not make any payment to any individual engaged by CDSI, probably why the government cannot identify any individual.

CDSI treated its workers as independent contractors pursuant to a worker classification letter from the IRS. The workers / independent contractors were bound to CDSI pursuant to written agreement. This determination letter of CDSI was issued over a decade ago and was the industry-wide standard for drywall contractors. Apparently unable to reverse its own decision with respect to the workers of CDSI, the government is reneging on its own determination for this industry by pursuing those that contracted with CDSI.

Thus, the government has erroneously determined that the workers of CDSI, bound to CDSI by contract, are employees of the subject taxpayer. Further, the government refuses to recognize or grant relief under Section 530(a) to members of the drywall contractor industry pursuant to its own prior determination for CDSI.

In summary, this taxpayer is not an employer with respect to the contractual payments to CDSI and would be entitled to Section 530 relief in any event.

Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**  
 (Rev. June 2009) Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN)  
 Employer identification number 88-0244843

Name (not your trade name) DESERT VALLEY PAINTING & DRYWALL INC.

Trade name (if any) \_\_\_\_\_

Address 3445 W LAKE MEAD BLVD. - SUITE 100  
Number Street Suite or room number

NORTH LAS VEGAS NV 89032-5221  
City State ZIP code

Use this form to correct errors you made on Form 941 or 941-SS for one quarter only. Type or print within the boxes. You MUST complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

**Part 1: Select ONLY one process.**

- ☐ 1. Adjusted employment tax return. Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.
- ☒ 2. Claim. Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

**Return You Are Correcting ...**

Check the type of return you are correcting:

☒ 941☐ 941-SS

Check the ONE quarter you are correcting:

☐ 1: January, February, March☐ 2: April, May, June☐ 3: July, August, September☒ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

2006 (YYYY)**Enter the date you discovered errors:**12/18/2008

(MM / DD / YYYY)

**Part 2: Complete the certifications.**

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

Note. If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5.

4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax for the current year and the overcollected social security and Medicare tax for current and prior years. For adjustments of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustment of social security tax and Medicare tax is for the employer's share only. I could not find the affected employees or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security and Medicare tax. For claims of employee social security and Medicare tax overcollected in prior years, I have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security and Medicare tax. For refunds of employee social security and Medicare tax overcollected in prior years, I also have a written statement from each employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each employee did not give me a written consent to file a claim for the employee's share of social security and Medicare tax; or each employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, and Medicare tax that I did not withhold from employee wages.

**Next** →

Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 4 (1, 2, 3, 4)
DESERT VALLEY PAINTING & DRYWALL INC.	88-0244843	Correcting calendar year (YYYY)
		2006

**Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.**

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)	Column 4 Tax correction
6. Wages, tips and other compensation (from line 2 of Form 941)	830,830.48	830,830.48	0.00	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Income tax withheld from wages, tips, and other compensation (from line 3 of Form 941)	22,245.66	22,245.66	0.00	Copy Column 3 here ▶ 0.00
8. Taxable social security wages (from line 5a, Column 1 of Form 941 or Form 941-SS)	830,830.48	830,830.48	0.00	× .124* = .
9. Taxable social security tips (from line 5b, Column 1 of Form 941 or Form 941-SS)	.	.	.	× .124* = .
10. Taxable Medicare wages and tips (from line 5c, Column 1 of Form 941 or Form 941-SS)	830,830.48	830,830.48	0.00	× .029* = .
11. Tax adjustments (from lines 7a through 7c of Form 941 or Form 941-SS)	.	.	.	Copy Column 3 here ▶ .
12. Special addition to wages for federal income tax	0.00	681,133.53	(681,133.53)	See instructions 10,217.00
13. Special addition to wages for social security taxes	0.00	681,133.53	(681,133.53)	See instructions 50,676.00
14. Special addition to wages for Medicare taxes	.	681,133.53	(681,133.53)	See instructions 11,852.00
15. Combine the amounts on lines 7–14 of Column 4				72,745.00
16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9)	.	.	.	See instructions .
17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS)	.	.	.	See instructions .
17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS)				
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4				72,745.00

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**Next** ➔

SEE ATTACHED STATEMENT!!

89146



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